

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.2.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.168 of 2006

The Commissioner of Income Tax
Madurai. . . Appellant

Vs.

M/s.Jamal Photo Industries (I) Pvt Ltd.
13B 19 Cross Street
Maharaja Nagar, Tirunelveli 11. . . Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 27.6.2005 in ITA No.348/Mds/2001 for the assessment year 1995-96 against the order of the Commissioner of Income Tax (Appeals)-XIII, Chennai dated 8.12.2000 in ITA.No.431/99-2000 against the order of the Assistant Commissioner of Income Tax Circle-1, Tirunelveli dated 31.3.1998 made in PAN/G.I.R.No. J-1001/AC/TNL 47-054-CT-0361.

For Appellant : Mr.T. Ravi Kumar, Jr.S.C.

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The appeal is directed against the order dated 27.6.2005 made in ITA No.348/Mds/2001 allowing deduction under Section 80I of the Income Tax Act holding that the photo processing machine installed by the assessee was used for the process of manufacturing and production of article or thing, entitling the assessee for deduction.

2. The brief facts of the case are stated as under.

The assessee derives income from photo studio by exposing the negatives and printing of positives/photos. The assessing officer rejected the assessee's claim for deduction under Section 80I of the

Act. However, on appeal, the Commissioner of Income Tax (Appeals) set aside the order of the assessing officer. Hence, the revenue preferred an appeal before the Tribunal, which confirmed the order of the Commissioner holding that exposing of film rolls amounts to manufacturing and therefore, the assessee was eligible for deduction under Section 80I of the Act. Aggrieved by the said order, the revenue has preferred the above appeal, raising the following substantial question of law.

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that processing of the film and printing photographs from the negatives amounts to a manufacturing activity and is an industrial undertaking eligible for the benefit of section 80I?"

3. There cannot be any dispute that the expression "manufacture" involves the concept of changes effected to a basic raw material resulting in the emergence of, or transformation into, a new commercial commodity. But, it is not necessary that the original article or material should have lost its identity completely. All that is required is to find out whether as a result of operation in question, a totally different commodity had been produced having its own name, identity, character or end use.

4. In the instant case, a negative film roll fitted had been exposed and produced as a distinct article, viz. photograph and such photograph cannot be called as a negative film and thus negative film loses its identity completely, after the same had been developed and had also become a totally different commercial commodity having its own identity/character and a product of end use. Therefore, what is involved while taking a photograph by a photographer is a manufacture. Hence, the assessee, having engaged themselves in manufacturing process, is entitled to claim investment allowance.

5. This Court in COMMISSIONER OF INCOME TAX v. PRASAD PRODUCTIONS P. LTD. (249 ITR 502), has already held as follows:

"The assessee's business consisted of producing feature films. It had a processing and drying plant, where exposed films in various stages were processed into positive films used for projection in cinema theatres. The assessee was entitled to investment allowance in respect of its plant and machinery."

6. The Andhra Pradesh High Court in COMMISSIONER OF INCOME TAX v. PRASAD PRODUCTIONS P. LTD. (225 ITR 348) has held as follows:

"that by the process carried out by the assessee, the raw film without images and sound were converted into films

with images and sounds, which was a new and distinct commodity well known in the trade as positive prints quite different from raw film. Therefore, the process of obtaining positive prints would be manufacture.

...

that the production of a negative by exposing the raw film and recording the pictures and sound track thereon would amount to production of a cinematograph film. That process should also include developing the exposed film to have the negative or the master film. But when positive prints are made from the master negative, the cinematograph film which was already produced is the raw material, and therefore, it cannot be said that there is a production of cinematograph film inasmuch as such cinematograph film was already produced with reference to the negative, and making of the positive film is only a process of duplication. The process of making positive prints from the negative so made is an independent activity which cannot be called production of a cinematograph film, but rather falls in the category of a duplication process. Therefore, since the main business of the assessee was to make the positive prints from negative prints, the fact that occasionally exposed films were also developed would not disqualify the assessee from claiming the allowance."

(emphasis supplied)

7. The Rajasthan High Court in COMMISSIONER OF INCOME TAX v. LAXMI ART STUDIO (249 ITR 710) has held that

"it is not the requirement that in order to fulfil the conditions of section 32A, the plant and machinery should have been installed in an industrial undertaking for the purpose of manufacture or production of any article or thing and must be related to the production of such article or thing which is saleable in the open market only. Any plant and machinery specified in section 32A manufacturing or producing any article or thing not in the prohibitory list in the Eleventh Schedule is a plant and machinery through which the article or thing is produced notwithstanding that such production of article or thing only satisfied the personal needs of the individual for whom it is manufactured or produced. A custom-made article or thing manufactured or produced does not cease to be an article or thing manufactured or produced because it is produced on order with particular specifications by the customer. ... the colour photo processing machine installed by the assessee, which accepted negatives of photo films and after applying chemicals and other things, delivered colour photographs in different sizes, was used in the manufacturing and production of article or thing known as

coloured photographs and was entitled for deduction under section 32A of the Income Tax Act, 1961."

(emphasis supplied)

8. As the question of law is well settled and the Tribunal had rightly held that the processing of film and printing photographs from the negatives amounts to a manufacturing activity and is an industrial undertaking eligible for the benefit of Section 80I of the Act, and therefore, the assessee is entitled to investment allowance, we do not see any infirmity in the order of the Tribunal. Hence, the appeal fails and the same is dismissed.

kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASST. REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL
2ND FLOOR, RAJAJI BHAVAN
BESANT NAGAR, MADRAS-90

2. THE COMMISSIONER OF INCOME TAX
MADURAI.

3. THE COMMISSIONER OF INCOME TAX
(APPEALS)-XIII
CHENNAI-34.

4. THE ASST. COMMISSIONER OF
INCOME TAX
CIRCLE-I, TIRUNELVELI.

1 cc to Mr.Pushya Sitaraman, Advocate, SR.7146

pv (co)

dv/2.5.06